

REMARKS

Reconsideration and withdrawal of the rejections of this application and consideration and entry of this paper are respectfully requested in view of the herein remarks and accompanying information, which place the application in condition for allowance. The Examiner is thanked for indicating that Applicants' elected invention comprising glufosinate, lignin sulfonate, urea, oil, and a surfactant is allowable and free of the prior art. The Examiner is also thanked for courtesies extended during a telephone conference on August 19, 2003, particularly his suggestions for clarifying the subject matter of claim 8. His time and consideration is appreciated.

I. STATUS OF CLAIMS AND FORMAL MATTERS

Claims 1-8 and 13-30 are under consideration in this application. Claims 1-4, 6-8 13, 15, 17, 18 and 24 have been amended; claims 25-30 have been added.

Support for the recitation "controlled release of the active compound" can be found on page 1, lines 6-7, and on page 2, line 26, of the specification. The remaining claims have been amended to delete recitations of subgroups and to address other formal matters. The deleted recitations are present in new claims 25-30. Claim 15 has been amended to correct its dependency, overcoming the objection to claim 15 and claim 16, dependent thereon. Claim 24 has been amended to correct a typographical error.

No new matter is added.

It is submitted that the claims, herewith and as originally presented, are patentably distinct over the prior art cited by the Examiner, and that these claims were in full compliance with the requirements of 35 U.S.C. §112. The amendments of and additions to the claims, as presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§§§ 101, 102, 103 or 112. Rather, these amendments and additions are made simply for clarification and to round out the scope of protection to which Applicants are entitled. Furthermore, it is explicitly stated that the herewith amendments should not give rise to any estoppel, as the herewith amendments are not narrowing amendments.

II. THE REJECTIONS UNDER 35 U.S.C. § 112, 2ND PARAGRAPH, ARE OVERCOME

Claims 6 and 17 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. As suggested by the Examiner, the "preferably" language

has been removed from claims 6 and 17 and the subgroups are now presented in dependent claims 28 and 29. Although not rejected, "preferably" language was also deleted from claim 4, and the removed subject matter is presented in claims 26 and 27. The recitation beginning with "in particular" was also deleted from claim 2 and is not re-presented, as it did not further limit the claim.

As was also suggested by the Examiner, the "which are known per se" language has been removed from claim 17. Applicants have amended claims 3 and 18 in a similar manner.

Reconsideration and withdrawal of the rejections under 35 U.S.C. §112, second paragraph, are requested.

III. THE REJECTIONS UNDER 35 U.S.C. § 102 ARE OVERCOME

Claims 1-4, 6, 7, 13, 14, 17, and 21-24 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Frisch *et al.*, U.S. Patent No. 5,238,904 (hereinafter "Frisch"). The rejection is traversed.

A two-prong inquiry must be satisfied in order for a Section 102 rejection to stand. First, the prior art reference must contain all of the elements of the claimed invention. *See Lewmar Marine Inc. v. Barient Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987). Second, the prior art must contain an enabling disclosure. *See Chester v. Miller*, 15 U.S.P.Q.2d 1333, 1336 (Fed. Cir. 1990). A reference contains an enabling disclosure if a person of ordinary skill in the art could have combined the description of the invention in the prior art reference with his own knowledge of the art to have placed himself in possession of the invention. *See In re Donohue*, 226, U.S.P.Q. 619, 621 (Fed. Cir. 1985).

Applying the law to the instant facts, the reference relied upon in the Office Action does not disclose, suggest or enable the instant invention. The Office Action alleges that it is inherent that the composition/method in Frisch would possess cationic-anionic electrostatic interactions and that the composition application to plants would suppress antagonistic interactions and increase crop selectivity.

The Examiner is respectfully reminded that, if it is recognized by one of skill in the art that the composition always results in cationic-anionic electrostatic interactions or the suppression of antagonistic interactions, then that claim element is "inherent" or otherwise implicit in the relevant reference, and the reference will anticipate a claim. *See, e.g., Standard Havens Products, Inc. v. Gencor Industries, Inc.*, 953 F.2d 1360, 1369 (Fed. Cir. 1991), *Rosco*,

Inc. v. Mirror Lite Co., 304 F.3d 1373, 1380 (Fed. Cir. 2002). However, in order for a reference to anticipate inherently, the missing descriptive material must necessarily be present, not merely probably or possibly present, in the prior art. *Rosco, Inc. v. Mirror Lite Co.*, 304 F.3d 1373, 1380 (Fed. Cir. 2002).

Frisch describes low viscosity aqueous preparations that contain glufosinate and at least one further herbicide dispersed in the aqueous phase, a combination of an alpha-olefin sulfonate and co-surfactants and surfactants. Frisch admits that electrostatic properties of the components in multi-phase systems may play a role in the stability of the composition (see, e.g., col. 1, lines 31-44 of Frisch). Frisch does not teach or suggest that the electrostatic interaction between an agrochemically active compound with cationic functional groups with an anionic polymer results in a controlled release of the active compound. Instead, the compositions and methods of Frisch relate to low viscosity solutions. Since Frisch does not disclose, suggest, or enable a composition wherein an electrostatic interaction relates to controlled release of an agrochemically active compound, claim 1 and dependent claims cannot be anticipated by Frisch.

Reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b) are requested.

IV. THE REJECTION UNDER 35 U.S.C. § 103 IS OVERCOME

Claims 5, 19, and 20 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Frisch as applied to claims 1-4, 6, 7, 13, 14, 17, and 21-24 above. This rejection is traversed.

The relevant case law mandates that there must be some prior art teaching that would have provided the necessary incentive or motivation for modifying the reference teachings. *In re Laskowski*, 12 U.S.P.Q. 2d 1397, 1399 (Fed. Cir. 1989); *In re Obukowitz*, 27 U.S.P.Q. 2d 1063 (BOPAI 1993). Further, as stated by the Court in *In re Fritch*, 23 U.S.P.Q. 2d 1780, 1783-1784 (Fed. Cir. 1992): "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggests the desirability of the modification." Also, for the § 103 rejection to be proper, both the suggestion of the claimed invention and the expectation of success must be founded in the prior art, and not Applicants' disclosure. *In re Dow*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988).

As stated above, Frisch does not teach or suggest that the electrostatic interaction between an agrochemically active compound with cationic functional groups with an anionic polymer results in a controlled release of the active compound. Instead, the compositions and

methods of Frisch relate to low viscosity solutions. Frisch does not teach or suggest determining optimum amounts and/or ratios of ingredients in order to optimize electrostatic interactions between an agrochemically active compound with cationic functional groups with an anionic polymer that result in a controlled release of the active compound. Since Frisch does not teach or suggest a composition wherein an electrostatic interaction relates to controlled release of an agrochemically active compound, claims 5, 19 and 20 are patentable over Frisch.

Reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a) are respectfully requested.

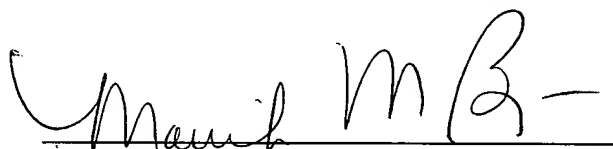
CONCLUSION

In view of the remarks and amendments herewith, the application is believed to be in condition for allowance. Favorable reconsideration of the application, further examination of the non-elected species, and issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date.

Respectfully submitted,

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